



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
ENFORCEMENT DIVISION
*DIRECTIVE***

**DIRECTIVE
NUMBER
212**

**DISTRIBUTION
DATE
October 1, 1998**

1. **SUBJECT: COMPLAINTS AFFECTED BY THE MOHASCO DECISION**
2. **PURPOSE:** To set forth the procedures for processing complaints over which the U.S. Equal Employment Opportunity Commission (EEOC) has concurrent jurisdiction that are filed with the Department of Fair Employment and Housing (DFEH) between 240 and 300 days from the date of the first alleged violation.
3. **BACKGROUND:** The U.S. Supreme Court ruled that EEOC has jurisdiction over complaints filed with "706" agencies if more than 240 days have elapsed from the date of the alleged violation. (A "706" agency is an agency that contracts with EEOC. DFEH is a "706" agency.) In such instances, the "706" agency must be allowed a 60-day deferral period to process the complaint before EEOC can consider the charge filed, even though it was received earlier. Therefore, an employment complaint where there is concurrent federal jurisdiction which is filed with DFEH after 240 days from the first alleged violation will be past EEOC's 300-day statute of limitations when the deferral period has elapsed. Unless DFEH terminates its proceedings prior to the 300 days, the complainant would lose the right-to-sue in federal court.

4. **PROCEDURES:**

A. **Calculating the Mohasco Period:**

To determine whether a case which is otherwise jurisdictional with EEOC should be waived because it is filed during the Mohasco period, the following considerations are applicable:

- 1) For purposes of Mohasco cases only, EEOC calculates the date for the alleged discriminatory act as the **FIRST** date of the alleged harm.

EXAMPLE: The complainant alleges that she was sexually harassed during the period of March 1, 1997 to May 30, 1997. The Mohasco period should be measured from March 1, 1997, the first date of harm.

NOTE: The calculation of the Mohasco period does not apply to determining the date of harm for filing complaints under federal law. For purposes of jurisdiction in determining whether a

complaint should be dual filed with EEOC, the ***last date (most recent date)*** of harm is still used.

- 2) If a complaint is filed within 240 to 300 days of the first date of harm, the case should be waived to EEOC as a Mohasco case.

EXAMPLE: In the above case, if complainant files a DFEH complaint in which there is concurrent federal jurisdiction, and the time period was within 240 to 300 days of March 1, 1997 (i.e., October 27 to December 26), the case would be waived to EEOC as a Mohasco case.

- 3) Where the first act of harm is ambiguous in the DFEH complaint (e.g., March 00, 1997), EEOC will calculate the date of harm as the first day of the month (e.g., March 1, 1997).
- 4) Mohasco waivers include cases filed under Title VII (of the Civil Rights Act of 1964), the ADEA (Age Discrimination in Employment Act), and the ADA (Americans with Disabilities Act).

B. Intake:

- 1) At the time of the intake interview, the Consultant will advise the complainant that in order to preserve his/her right-to-sue in federal court, the complaint will be waived to EEOC for investigation.
- 2) The complainant will be provided the explanatory handout, "Notice to Persons Filing More Than 240 Days From the Alleged Violation" (DFEH-100-07).

C. Serving the Complaint and Closing the Case:

- 1) The complaint will be given a DFEH number, including an "m" suffix, and an EEOC case number.
- 2) The complaint is to be served using the short service letter.

- 3) An EEOC Transmittal Form (EEOC-212-A) will be completed, and will have attached to it a copy of the:
 - a) Complaint;
 - b) Pre-Complaint Questionnaire; and
 - c) Interview notes.
- 4) The case will then be immediately closed with Closing Category 11, "Processing Waived To Another Agency."

5. **APPROVAL:**

Nancy C. Gutierrez, Director

Date